

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF GOODHUE

FIRST JUDICIAL DISTRICT

Gregg H. Johnson, William Flies,
Linda Flies, and Chateau Frontenac
Homes, Association,

COURT FILE NO. **25-CV-14-1835**

CASE TYPE: Civil Other/Misc.

Plaintiffs,

AMENDED COMPLAINT

vs.

OCT 10 2014

Township of Florence and State of
Minnesota,

Defendants.

Plaintiffs, for their complaint against defendants, state as follows:

GENERAL BACKGROUND

1. The plat of WESTERVELT was filed with the Goodhue County Register of Deeds in 1857. In 1859 the name was changed to FRONTENAC.

2. The dedication on the plat states as follows:

"do hereby dedicate to Public use the Streets and Alleys as laid out, also the Three Parks, the Valhalla, the Delta, the Wakondiota. We also dedicate to public use the Lake Shore between Blocks 9 & 13 to be used as a Steamboat Landing, reserving to ourselves all rights of wharfage and all rights and privileges of Ferry either within the above limits or elsewhere, either at the ends of the streets or within the boundaries of Lots which run to the water."

3. The Minnesota Supreme Court in **Schaller v. Town of Florence**, 259 N.W. 530, 533 (1939), stated that, by the dedication clause, the owners conveyed to the public all of the areas not surveyed into lots and blocks, which includes all of the land along the Lake. The Schaller Court refused to find that the public abandoned the land so dedicated even though Mrs. Schaller was the only one who used and maintained the land.

4. In 1943 the Minnesota legislature passed Minn. Stat. § 541.023.
5. The land which is the subject matter of this action is located on Frontenac point, which protrudes easterly into Lake Pepin on the Mississippi River, a navigable body of water. It involves part of the land that was involved in the **Schaller** case, as well as additions onto that land into Lake Pepin. Most of the additional land was added when earth was washed down from the hills to the west, which was then spread around to make the additions useful.
6. The description of the SUBJECT LAND is:

That part of the land in Goodhue County, Minnesota lying between CHATEAU FRONTENAC HOMES, Lot 1, Block 13, FRONTENAC and Lake Pepin described as follows:

Beginning at the southeasterly corner of Outlot C, CHATEAU FRONTENAC HOMES; thence North 19 degrees 08 minutes 09 seconds West, assumed bearing, along the northeasterly line of CHATEAU FRONTENAC HOMES 160.00 feet to the northeasterly corner of Outlot B, CHATEAU FRONTENAC HOMES; thence South 70 degrees 38 minutes 56 seconds West, along the northerly line of said Outlot B 91.53 feet to the most westerly corner of said Outlot B; thence North 75 degrees 48 minutes 44 seconds West, along the northerly line of CHATEAU FRONTENAC HOMES 69.97 feet to the southeasterly corner of Outlot A, CHATEAU FRONTENAC HOMES; thence North 19 degrees 08 minutes 09 seconds West, along the easterly line of Outlot A 11.18 feet to the northeasterly corner of said Outlot A; thence South 70 degrees 51 minutes 51 seconds West, along the northerly line of Outlot A 17.01 feet to the most westerly corner of said Outlot A; thence North 75 degrees 48 minutes 44 seconds West, along the northerly line of CHATEAU FRONTENAC HOMES 278.57 feet to the northwesterly corner of Block 4, CHATEAU FRONTENAC HOMES; thence northwesterly 378.76 feet along a non tangential curve concave to the southwest, radius 858.48 feet, central angle 25 degrees 16 minutes 44 seconds and chord bearing North 43 degrees 03 minutes 50 seconds West; thence North 55 degrees 42 minutes 12 seconds West, tangent to the last described curve 65.23 feet; thence northwesterly 76.14 feet along a tangential curve concave to the northeast, radius 500.00 feet, central angle 08 degrees 43 minutes 32 seconds and chord bearing North 51 degrees 20 minutes 26 seconds West to the southerly line of said Lot 1, Block 13; thence easterly, along said southerly line to the shoreline of Lake Pepin; thence southerly along said shoreline to the intersection with a line bearing South 68 degrees 34 minutes 25 seconds East from the point of beginning; thence North 68 degrees 34 minutes 25 seconds West to the point of beginning.

A survey of the SUBJECT LAND is attached hereto as EXHIBIT A.

7. According to the Minnesota Supreme Court in the Schaller case the SUBJECT LAND is part of the land dedicated to defendant Township of Florence on the plat of WESTERVELT (now FRONTENAC).

8. Plaintiffs believe defendant Township of Florence intends to use the SUBJECT LAND for parking and picnic tables.

9. The SUBJECT LAND is on the Mississippi River, a navigable body of water. Plaintiffs' interest in the SUBJECT LAND is subject to those proprietary and sovereign rights of the State of Minnesota in all that portion of land lying below the ordinary high watermark of Lake Pepin, not intending, however, to deprive the fee owners of the usual riparian rights that attach to the land riparian to a navigable public body of water incident to the ownership thereof.

10. For more than 15 continuous years, plaintiffs and their predecessors have used the SUBJECT LAND in a manner which is open for all to see, without permission from anyone, and were in exclusive and actual possession.

FIRST CAUSE OF ACTION: ABANDONMENT

11. Defendant Township of Florence failed to record its interest in the SUBJECT LAND pursuant to Minn. Stat. § 541.023 and is presumed to have abandoned its interest in the SUBJECT LAND.

12. Defendant Township of Florence did not exercise possession and use of the SUBJECT LAND for more than 40 years, as would place a prudent person on inquiry that it owned the SUBJECT LAND as required by Minn. Stat. § 541.023 to rebut the presumption of abandonment.

13. Plaintiffs, as the fee owners of the land abutting the SUBJECT LAND, are the fee owners of the SUBJECT LAND, subject only to the rights of the public which have been

abandoned pursuant to Minn. Stat. § 541.023.

SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT

14. Plaintiffs believe defendant Township of Florence intends to use the SUBJECT LAND for parking and picnic tables, to clear trees from the SUBJECT LAND and to prevent plaintiffs from having their docks on the SUBJECT LAND.

15. The dedication of the SUBJECT LAND to the public does not give the Township of Florence the right to use the SUBJECT LAND for the purposes to which defendant Township of Florence intends to use it.

THIRD CAUSE OF ACTION: ADVERSE POSSESSION

16. Plaintiffs have acquired the SUBJECT LAND by adverse possession.

NOW THEREFORE, plaintiffs pray for an Order of this Court as follows:

1. For a judgment that plaintiffs are the fee owners of that land located in Goodhue County, Minnesota described as follows:

That part of the land in Goodhue County, Minnesota lying between CHATEAU FRONTENAC HOMES, Lot 1, Block 13, FRONTENAC and Lake Pepin described as follows:

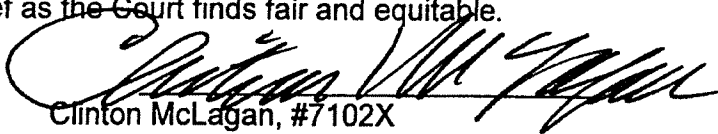
Beginning at the southeasterly corner of Outlot C, CHATEAU FRONTENAC HOMES; thence North 19 degrees 08 minutes 09 seconds West, assumed bearing, along the northeasterly line of CHATEAU FRONTENAC HOMES 160.00 feet to the northeasterly corner of Outlot B, CHATEAU FRONTENAC HOMES; thence South 70 degrees 38 minutes 56 seconds West, along the northerly line of said Outlot B 91.53 feet to the most westerly corner of said Outlot B; thence North 75 degrees 48 minutes 44 seconds West, along the northerly line of CHATEAU FRONTENAC HOMES 69.97 feet to the southeasterly corner of Outlot A, CHATEAU FRONTENAC HOMES; thence North 19 degrees 08 minutes 09 seconds West, along the easterly line of Outlot A 11.18 feet to the northeasterly corner of said Outlot A; thence South 70 degrees 51 minutes 51 seconds West, along the northerly line of Outlot A 17.01 feet to the most westerly corner of said Outlot A; thence North 75 degrees 48

42 minutes 12 seconds West, tangent to the last described curve 65.23 feet; thence northwesterly 76.14 feet along a tangential curve concave to the northeast, radius 500.00 feet, central angle 08 degrees 43 minutes 32 seconds and chord bearing North 51 degrees 20 minutes 26 seconds . West to the southerly line of said Lot 1, Block 13; thence easterly, along said southerly line to the shoreline of Lake Pepin; thence southerly along said shoreline to the intersection with a line bearing South 68 degrees 34 minutes 25 seconds East from the point of beginning; thence North 68 degrees 34 minutes 25 seconds West to the point of beginning.

free of any interest in defendants herein except those proprietary and sovereign rights of the State of Minnesota in all that portion of land lying below the ordinary high watermark of Lake Pepin, not intending, however, to deprive the fee owners of the usual riparian rights that attach to the land riparian to a navigable public body of water incident to the ownership thereof.

2. In the alternative, for a declaratory judgment that the Township of Florence cannot use the SUBJECT LAND for parking and picnic tables, clear trees from the SUBJECT LAND, or prevent plaintiffs from having their docks on the SUBJECT LAND.
3. And for such other relief as the Court finds fair and equitable.

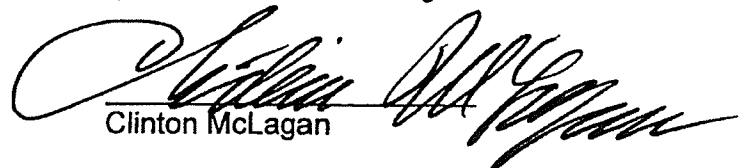
Dated: September 29, 2014



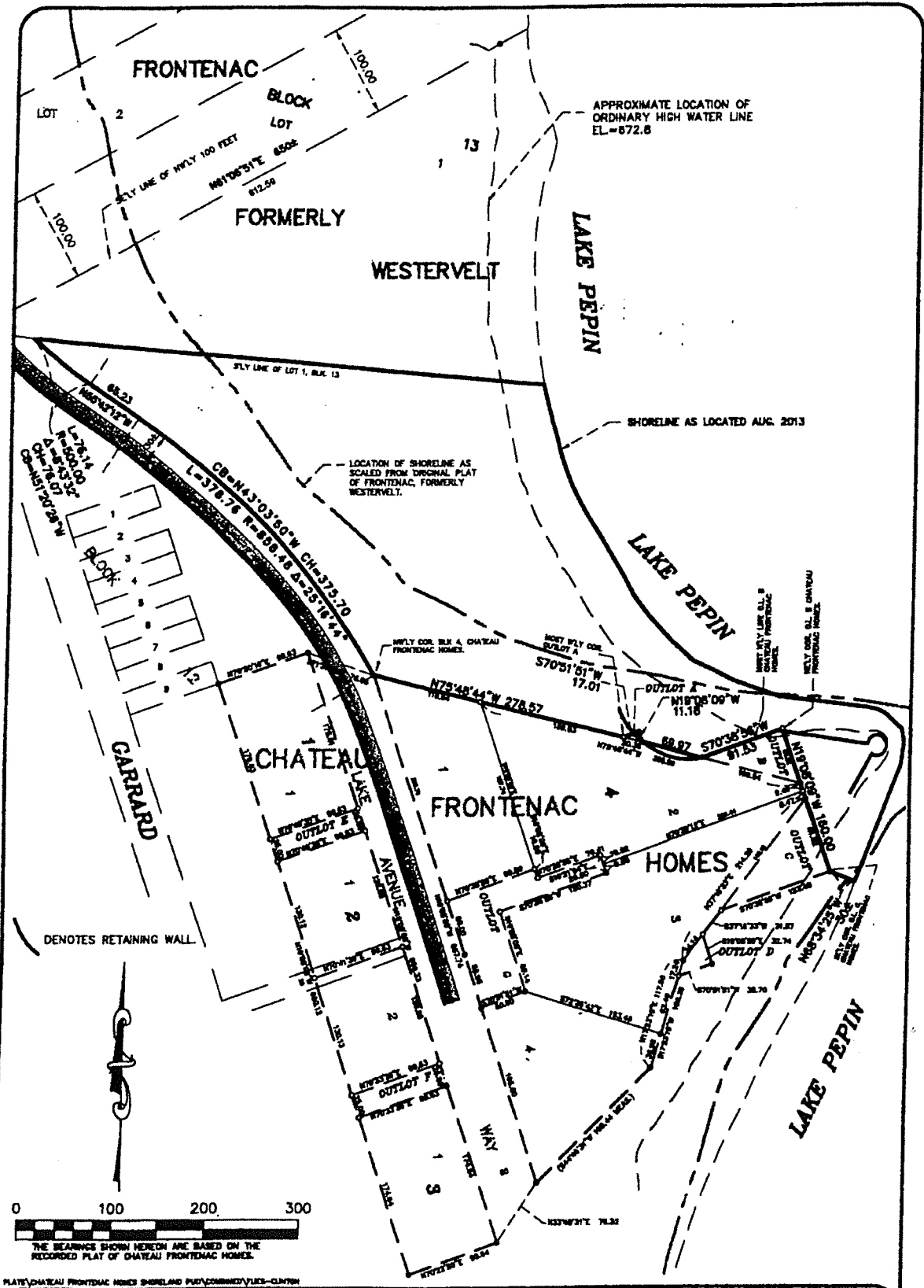
Clinton McLagan, #7102X
Attorney for Plaintiff
P.O. Box 21347
Eagan, MN 55121
Tel (651) 209-3344

ACKNOWLEDGMENT

The undersigned hereby acknowledges that if Minn. Stat. §549.211 subd. 2 has been violated, appropriate sanctions may be imposed pursuant to Minn Stat. §549.211 subd. 3.



Clinton McLagan



SKETCH FOR:
CHATEAU FRONTENAC HOMES ASSOCIATION

JOHNSON & SCOFIELD INC.
SURVEYING AND ENGINEERING
 1203 MAIN STREET, RED WING, MN 55066
 (651) 388-1558

DATED: July 21, 2014		REVISED: July 26, 2014	
BK. NA	PG. NA	W.O.#	DRAWING NUMBER
SHEET 1 OF 1 SHEETS		14-419	S-52258

EXHIBIT A